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The SHELDON R. BLUM TRUST
Unserved Party Claiming Adverse
Interest**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordinated Proceedings
Special Title {Rule 1550 (b)}

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Los Angeles County Superior Court
Case No. BC 325 201

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Kern County Superior Court
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of
Lancaster; Diamond Farming Co. v. City of
Palmdate Water District.
Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

**NOTICE OF HEARING OF DEMURRER
OF CROSS-DEFENDANT SHELDON R.
BLUM, TRUSTEE, TO CROSS-
COMPLAINT OF BOLTHOUSE
PROPERTIES, LLC.**

Hearing Date: January 28, 2008
Time: 9:00 a.m.
Dept. No.: 1
Judge: Hon. Jack Komar

Cross-Complaint Filed: 1/2/07

Trial Date: Not Set

1 TO: Cross-Complainant BOLTHOUSE PROPERTIES, LLC., and to it's Attorneys of Record:

2 NOTICE IS HEREBY GIVEN that on January 28, 2008, at 9:00 a.m., or soon thereafter as
3 the matter may be heard in Department 1 of the above-entitled Court, the Court will hear the
4 Demurrer of Cross-Defendant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM TRUST,
5 to the unverified Cross-Complaint of Cross-Complainant BOLTHOUSE PROPERTIES, LLC.
6

7 The Demurrer is based on this Notice, the Demurrer; Memorandum of Points & Authorities;
8 the Declaration of Sheldon R. Blum, Trustee, and attached Exhibits "A", & "B", served herewith, and
9 on all of the papers and pleadings filed in this action, the records of which this Court must or may
10 take Judicial Notice, and on oral argument which may be presented at the hearing.

11 Dated: December 11, 2007

12 Law Offices of Sheldon R. Blum

13
14 By: 

15 SHELDON R. BLUM, ESQ.

16 Attorney For Defendant Sheldon R. Blum,
17 Trustee For The Sheldon R. Blum Trust

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**DEMURRER OF CROSS-DEFENDANT
SHELDON R. BLUM, TRUSTEE TO
CROSS-COMPLAINT OF CROSS-
COMPLAINANT BOLTHOUSE
PROPERTIES, LLC; REQUEST FOR
AWARD OF ATTORNEY FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES; & DECLARATION, IN
SUPPORT THEREOF**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Los Angeles County Superior Court
Case No. BC 325 201

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DEMURRER

Cross- Defendant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM TRUST (hereinafter "Blum Trustee), demurs to the unverified Cross-Complaint of Cross-Complainant BOLTHOUSE PROPERTIES, LLC., (hereinafter "LLC Cross-Complaint" or "Bolthouse Properties"), and to each cause of action therein, on the following grounds:

1. There is another action pending between the same parties [or their privies] on the same cause of action. (Code of Civil Proc. § 430.10(c)).
2. There is a defect or misjoinder of parties. (Code of Civil Proc. § 430.10(d)).
3. The Cross-Complaint does not state facts sufficient to constitute a cause of action against Defendant Blum Trustee. (Code of Civil Proc. § 430.10(e)).
4. The Cross-Complaint is uncertain, which includes ambiguous and unintelligible. (Code of Civil Proc. § 430.10 (f)).

Blum Trustee further requests the Court to award Blum Trustee his costs of suit, which shall include reasonable attorney fees to him as provided by Civil Code § 1717, and allowable as costs under Code of Civil Procedure § 1033.5(a)(10)(A). This remedy is pursuant to the terms of the contract between Blum Trustee and Wm. Bolthouse Farms, Inc (hereinafter "Bolthouse Farms"), and Civil Code §§ 1995.320, and 1995.330. (See Lease Agreement, attached hereto, and marked as Exhibit "B"; See Discussion *infra*, Part 17, Pg. 15).

Dated: December 11, 2007

Law Offices of Sheldon R. Blum

By: 

SHELDON R. BLUM, ESQ.
Attorney For Cross- Defendant Sheldon R. Blum,
Trustee For The Sheldon R. Blum Trust

MEMORANDUM OF POINTS AND AUTHORITIES

1. Request for Judicial Notice.

Pursuant to Evidence Code § 453, mandatory judicial notice applies to the contents of the file in the Riverside County Superior Court, Case Nos.: RIC 353 840; RIC 344 668; & RIC 344 436, and to the contents of the file in the Santa Clara County Superior Court, Case No.: 1-05-CV-049053. In particular, but not by way of limitation, Blum Trustee requests judicial notice of the Second Amended Complaint (hereinafter "SAC"), filed on 12/3/03, in the Superior Court of Riverside County, Case No. RIC 344 436, a true and correct copy of which is attached hereto, marked as Exhibit "A". (See also Blum Trustee's Demurrer to, and Motion to Dismiss/Strike Bolthouse Farms verified Second Amended Complaint (hereinafter "SAC").

In the alternative, Blum Trustee asks the Court to take permissive judicial notice of the contents of said files pursuant to Evidence Code § 452(d). The Court may take judicial notice of the records in the above-referenced cases to the extent that such matters are not subject to mandatory judicial notice. (*Cote v. Henderson* (1990) 218 Cal.App.3d 796, 802; *Tarr v Merco Constr. Engineers, Inc.* (1978) 84 Cal.App. 3d 707, 712).

Finally, Blum Trustee further asks the Court to take permissive judicial notice of the Lease Agreement dated August 2, 2001, by the terms of which Bolthouse Farms leases the Blum Parcels from Blum Trustee. A true and correct copy of the Lease Agreement is attached hereto, and marked as Exhibit "B". The existence of the Lease Agreement is of such common knowledge within the territorial jurisdiction of this Court that it cannot be the subject of dispute. (Evid. Code § 452(g)). Furthermore, the existence of the Lease Agreement is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (*Id.* subd. (h); *Estate of Randolph* (1980) 112 Cal.App.3d 81, 84).

////

2. **Ten Causes of Action alleged in the Unverified Cross-Complaint.**

The Cross-Complaint alleges ten causes of action consisting of: (1) "Quiet Title / Appurtenant Rights"; (2) "Declaratory Relief"; (3 & 4) "Unlawful Taking / Equal Protection/Due Process" 42 U.S.C. § 1983"; (5) "Declaratory Relief of *Inter Se* Appropriative Rights"; (6) "Return Flows - Against All Defendants"; (7) "Self-Help - Against Purveyor Parties"; (8) "Storage Rights"; (9) "Storage Space - Against All Defendants"; and (10) "Injunctive/Physical Solution".

3. **General Allegations of the Cross-Complaint.**

The material facts alleged as "General Allegations" (pp. 3-5), which are here listed according to their paragraph numbers in the Cross-Complaint are, as follows:

1. Cross-Complainant Bolthouse Properties, LLC, is a California corporation [sic], authorized to do business in California.

2. Cross-Complainant claims to own in fee or to lease certain properties (thereafter individually referred to as a "PARCEL"), in the Antelope Valley area of Los Angeles County. The Cross-Complaint does not itself identify the parcels. Instead, it refers to Exhibit "A", attached to and incorporated into the Bolthouse Farms SAC. This Exhibit lists the Owner of each PARCEL, whether it is under lease, property legal description, and the Los Angeles County APN.

3. Each PARCEL overlies percolating groundwater, the extent of which is unknown to Cross-Complainant.

4. Cross-Complainant claims to be ignorant of the true names and capacities of defendant MOES 1 through 10,000. Cross-Complainant states that it will amend the pleadings to allege the true names of the MOES once they are ascertained.

5. "By virtue of the location of each PARCEL overlying groundwater", Cross-Complainant claims it holds overlying water rights or other rights to groundwater, entitling it to extract and beneficially use the water on the property "(Cross-Complainant's overlying water rights)."

1 6. Cross-Complainant is informed and believes that each defendant currently extracts
2 groundwater "for use on property not held by the extracting defendant or for some other non-overlying
3 use."

4 7. Cross-Complainant alleges an "appurtenant right and/or other water right to pump and
5 reasonably use groundwater on the parcels at issue in this lawsuit. These rights are claimed to be
6 superior to the rights of Cross-Defendants depending upon the California priority water allocation
7 system.

8 8. On information and belief, Cross-Complainant alleges that each Cross-Defendant
9 claims a right to extract groundwater and that their rights are superior to or co-equal with, Cross-
10 Complainant's overlying water rights.

11 9. "The quantity of alleged superior and/or co-equal rights claimed by Cross-Defendants,
12 and each of them, is currently not known."

13 The Cross-Complaint is not verified.

14 **4. Procedural History.**

15 On January 25, 2001, Bolthouse Farms filed a Complaint to Quiet Title in the
16 Riverside County Court, Case Nos.: RIC 353840, & RIC 344346. On May 1, 2001, Bolthouse
17 Farms filed a verified First Amended Complaint herein, and later a Second Amended
18 Complaint on November 14, 2003. However, that pleading was not verified. Therefore, on
19 December 3, 2003, Plaintiff filed the verified SAC, which is now the operative complaint. No
20 Complaint has ever been served on Blum Trustee, nor has the SAC been amended to include
21 Blum Trustee as a fictitiously named defendants.

22 On January 2, 2007, a related "Privy" entity, herein Cross-Complainant Bolthouse
23 Properties, LLC., (represented by the same attorneys), commenced the instant cross-action.
24 The Cross-Complaint has not been served on Blum Trustee. Title to the alleged overlying

1 water rights and/or other appurtenant rights to pump and beneficially use groundwater are
2 alleged to be on the same "PARCELS" as Bolthouse Farms alleged in its SAC.

3 **5. The Cross-Complaint is subject to demurrer on the grounds set forth in Code of**
4 **Civil Procedure § 430.10.**

5 **A. Authority for Demurrer.**

6 Code of Civil Procedure § 430.30(a), provides in part:

7 "When any ground for objection to a complaint . . . appears on
8 the face thereof. . . the objection on that ground may be taken
by a demurrer to the pleading."

9 In addition to the facts appearing on the face of the pleading, judicially noticed matters
10 may be read into the complaint in determining its sufficiency. (*E.H. Morrill Co v. State of*
11 *California* (1967) 65 Cal.2nd 787, 795).

12 **B. Grounds for Demurrer.**

13 There are four separate grounds listed in Code of Civil Procedure § 430.10, which apply:

14 The party against whom a complaint . . . has been filed my object
15 by demurrer . . . to the pleading on any one or more of the following
16 grounds:

17 (c) There is another action pending between the same parties on
18 the same cause of action.

19 (d) There is a defect or misjoinder of parties.

20 (e) The pleading does not state facts sufficient to constitute a cause
21 of action.

22 (f) The pleading is uncertain, which includes ambiguous and unintelligible.

23 **6. Each cause of action fails to state facts sufficient to constitute a cause of action.**

24 **A. Each cause of action fails to allege facts sufficient to establish Cross-**
25 **Complainant's 'Standing to Sue'.**

26 **(1) Bolthouse Properties, LLC., and Wm. Bolthouse Farms, Inc., cannot both be**
27 **the 'Real Party in Interest'.**

1 Failure to establish standing is a separate ground for demurrer based on a failure to
2 allege facts sufficient to constitute a cause of action. (Code of Civil Proc. § 430.10(e)); *Parker v.*
3 *Bowron* (1935) 40 Cal.2d 344, 351). Similarly, Code of Civil Procedure § 367, requires that every
4 action must be prosecuted in the name of the "real party in interest", except as otherwise provided by
5 statute. (*Killian v Millard* (1991) 228 Cal.App.3d 1601, 1605). "A complaint filed by someone other
6 than the real party in interest is subject to a general demurrer on the ground that it fails to state a
7 cause of action." (*Redevelopment Agency of San Diego v. San Diego Gas & Electric Co.* (2003) 111
8 Cal.App.4th 912, 921). By reason of the Assignment/Transfer, there is also another action pending
9 between the same parties [or privies] on the same cause of action. (See also *infra*, Part 15, Pg. 13).

10
11 The Lease Agreement between Blum Trustee and Bolthouse Farms (Ex. "B", herein),
12 identifies Bolthouse Farms as the only Tenant and grants only the right to pump overlying groundwater
13 on the Blum Parcels. By the instant Cross-Complaint, Bolthouse Properties claims those same rights.
14 The allegations of ownership of parcels and/or water rights in the SAC and the Cross-Complaint are
15 essentially the same. The Bolthouse Farms SAC alleges at P. 2, ¶ 2:

16 "2. Plaintiff [Bolthouse Farms] either owns in fee or leases certain
17 parcels of real property (hereinafter individually referred to as a
18 "PARCEL") in the Antelope Valley area of Los Angeles County,
19 California. Each PARCEL is identified by the legal description that
are attached as Exhibit "A" hereto, and incorporated herein by this
reference."

20 Unlike the SAC, the Cross-Complaint has no list of "PARCELS" or other exhibits attached
21 thereto. Instead, Cross-Complainant relies upon the same "PARCELS" and water rights as expressly
22 identified in the Bolthouse Farms SAC, at Pg. 3 ¶ 2, as follows::

23
24 "2. Cross-Complainant owns in fee certain parcels of real
25 property, and/or own water rights for certain properties,
(hereinafter individually referred to as a "PARCEL") in the
26 Antelope Valley area of Los Angeles County, California.
Each Parcel has previously been identified in previous
27 Complaints filed by WM. BOLTHOUSE FARMS, INC. in the
Riverside action . . ."

1 From the face of the two pleadings, the Court can discern that both Bolthouse Farms and
2 Bolthouse Properties are seeking simultaneously to Quiet Title to the identical "PARCELS" and water
3 rights. If Bolthouse Farms is in fact the "real party in interest" in its action, then Bolthouse Properties
4 cannot be the "real party in interest" in the present cross-action. It follows that the Cross-Complaint
5 fails to establish Bolthouse Properties "standing" to bring this action. (Code of Civil Proc. § 430.10(e);
6 *Redevelopment Agency of San Diego* 111 Cal.App.4th at p. 21).

7
8 **(2) Even if Cross-Complainant had 'overlying water rights', it does not
have 'appropriative water rights' on the Blum Parcels.**

9 Both the Bolthouse Farms' SAC and the present Cross-Complaint allege overlying
10 water rights, and not appropriative water rights. Those allegations, even if true, would make
11 both Bolthouse Farms and Bolthouse Properties "overlying pumpers" on the same Parcels.
12 Under California law, groundwater is part and parcel of the land above it. An owner of land
13 overlying the groundwater basin has a prior and paramount right to use the groundwater
14 underneath his property. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224,
15 1240-1241). Therefore, neither of the Bolthouse entities can rightfully claim ANY title to the water
16 rights on the Blum Parcels. It follows that the Cross-Complaint fails to state facts sufficient to
17 constitute a cause of action. (Code of Civil Proc. § 430.10(e)).

18
19 **B. By not being verified, the Cross-Complaint fails to state facts sufficient to
20 constitute a cause of action for Quiet Title.**

21 A Quiet Title complaint must be verified. (Code of Civil Proc. § 761.020). Where a
22 pleading is required to be verified, the objection may be raised by demurrer for failure to state a
23 cause of action, (*Blum vs. Superior Court* (2007) 141 Cal.App.4th 418; CCP 430.10(e)), or by
24 Motion to Strike as it is not drawn in conformity to the law (Code of Civil Proc. § 436(b)).

25 **7. The First & Second Cause of Action fail to allege facts sufficient to constitute a
26 cause of action for Quiet Title.**

A. The First & Second Causes of Action fail to allege the jurisdictional fact of 'Adverse Possession'.

The Cross-Complaint also fails to state facts sufficient to constitute a cause of action to Quiet Title in that it does not, and cannot allege the jurisdictional fact that it holds the Blum Parcels adversely to Blum Trustee. Civil Code § 1006, provides:

The title conferred by occupancy is not a sufficient interest in real property to enable the occupant . . . to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

Cross-Complainant's occupancy of the Blum Parcels would be a sufficient basis for the present action only if that occupancy has "ripened into title by prescription." However, by law it is impossible for Plaintiff to acquire prescriptive title to the Blum Parcels because "a lessee [assignee or transferee] in possession of real property under a lease cannot dispute his landlord's title nor can he hold adversely to him while holding under the lease." (*Swartzbaugh v. Sampson* (1936) 11 Cal.App.2d 451, 462). As such, the pleading fails to state facts sufficient to constitute a cause of action to Quiet Title against Blum Trustee. (Code of Civil Proc § 430.10(e)).

By the terms of the Lease Agreement (Ex. "B"), Blum Trustee leased the Blum Parcels and their accompanying right to use groundwater, exclusively to Bolthouse Farms. The only means by which Cross-Complainant could hold the rights herein alleged is by Assignment or Transfer from Bolthouse Farms. Whatever contractual rights the assignor holds pass to his assignee. (*Amaigamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2007) 148 Cal.App.4th 39, 52. See generally 1 Witkin, *Summary of Cal. Law* (9th ed. 1987), *Contracts*, § 948, p. 844). [Assignee "stands in the shoes" of the assignor]). If Bolthouse Farms, as Blum Trustee's tenant cannot hold the Blum Parcels adversely to Blum Trustee, then as Bolthouse Farms' assignee, neither can Cross-Complainant.

B. The First & Second Causes of Action fails to allege facts establishing the basis of Cross Complainant's claimed title.

Demurrer of Cross-Defendant Blum Trustee's to Cross-Complaint of Bolthouse Properties, LLC

Just like Bolthouse Farms, Bolthouse Properties alleges that it holds overlying water rights "by virtue of the location of each PARCEL overlying groundwater." (Ex. "A" p 4 ¶ 5). Code of Civil Procedure § 761.020(b), requires that a complaint to quiet title allege facts showing "the basis of the title". The Cross-Complaint does not allege any Assignment or Transfer from Bolthouse Farms, nor any basis for Cross-Complainant's claimed fee title. Cross-Complainant's general allegation of ownership is treated as a conclusion of law, unless detailed facts on which ownership is predicated are alleged. (*Stafford v. Ballinger* (1962) 199 Cal.App.2nd 289, 292). The absence of this essential allegation renders the Cross-Complaint insufficient to state a cause of action. (*Ibid.*).

C. The First & Second Causes of Action cannot state a cause of action to Quiet Title based on 'Quasi Equitable Ownership'.

The Cross-Complaint makes the 'judicial admission' that Blum Trustee holds legal title to the Blum Parcels and readily admits that the Parcels are "LEASED". Even if valid, the purported assignment or transfer of lease rights to Cross-Complainant would at best confer a "quasi equitable title". A quiet title action will not lie in favor of an equitable title as against the holder of a legal title. (*G.R. Holcomb Estate Co. v. Burke* (1935) 4 Cal.2nd 289, 297).

8. The Third & Fourth Causes of Action fail to state facts sufficient to constitute a violation of 42 U.S.C. § 1983, ("Unlawful Taking" / "Equal Protection / Due Process").

Simply stated, both counts are based on actions "under color of law", which cannot be alleged against Blum Trustee. (*Flagg Bros., Inc., v. Brooks* (1978) 436 U.S. 149, 156; CCP 430.10(e)).

9. The Fifth Cause of Action fails to state facts sufficient to constitute a cause of action.

The Fifth Cause of Action purports to state a claim for "Declaratory Relief of *Inter se* Appropriative rights. It alleges legal conclusions and surmises on factual scenerios. (Cross-Complaint at pp. 7-8, ¶ 21). Although the Fifth Cause of Action purports to be for declaratory

1 relief, it does not say what Cross-Complaint wants the Court to declare. Moreover, the issue is
2 not ripe for decision because it depends on contingencies and the occurrence of facts that has
3 not been found to currently exist. (See *People v. Murrison* (2002) 101 Cal.App.4th 349, 362-363
4 [until water restrictions are actually established, a landowner's claim of a taking is not ripe]).

5 **10. The Sixth Cause of Action fails to allege facts sufficient to constitute a cause of**
6 **action against Blum Trustee.**

7 The Sixth Cause of Action entitled "Return Flows-Against All Defendants", apparently
8 attempts to allege either a cause of action to quiet title or for declaratory relief. However, it does
9 neither. Cross-Complainant alleges that it has pumped and used groundwater on "its" parcels to
10 irrigate crops. It therefore appears that this cause of action pertains only to the parcels that
11 Cross-Complainant claims to "own in fee" (See Cross-Complaint at p. 3 ¶ 2), and not to those
12 parcels that are leased to others by their owners, such as the Blum Parcels. In addition, Cross-
13 Complainant does not allege what it wants the court to do with respect to the "return flows" as
14 well as with the right to store water from the "return flows".

15 To the extent that the Sixth Cause of Action seeks to quiet title to the return flows, it
16 fails for being unverified and not including three essential allegations required by Code of Civil
17 Procedure § 761.020: (1) The basis of the claimed title (*id.* at subd. (b)); (2) the adverse claims
18 of Cross-Defendants (*id.* at subd. (c)); and (3) the date as to which the determination is sought
19 (*id.* at subd. (d)). Based on the foregoing the count fails (Code of Civil Proc. § 430.10(e)).

20
21 **11. The Seventh Cause of Action fails to allege facts sufficient to constitute a cause**
22 **of action against Blum Trustee.**

23 By its title "Self-Help-Against Purveyor Parties", this count is only directed at the
24 Cross-Defendant Water Companies, Water Districts, Irrigation Districts, and the like. Blum
25 Truste is not a "purveyor". (Code of Civil Proc. § 430.10(e)). In addition, until the court rules, the
26 issue is not ripe for adjudication (See *supra* at Part 7). Finally, to the extent that the Court

1 construes the count to quiet title, it is fatally defective under Code of Civil Procedure § 761.020.

2 **12. The Eighth & Ninth Causes of Action fail to allege facts sufficient to constitute a**
3 **cause of action against Blum Trustee and are uncertain.**

4 These causes of action are uncertain as they do not state which Cross-Defendant(s)
5 they are alleged to be against. Furthermore, they allege mere possession of rights, rather than
6 ownership. Neither cause of action state the relief or remedy sought concerning the rights
7 alleged therein. Nor do they include the above-stated three (3), allegations mandated by CCP §
8 761.020(b),(c), and (d), and therefore fail. Based on the foregoing defects, these counts fail
9 under Code of Civil Procedure §§ 430.10(e), and (f)).

10 **13. The Tenth Cause of Action fails to state facts sufficient to constitute a cause of**
11 **action against Blum Trustee.**

12 In contrast to some of the foregoing causes of action, which allege rights but not the
13 relief or remedy requested, the Tenth Cause of Action seeks a remedy, injunction/physical
14 solution, without alleging a cause of action. "An injunction is a remedy, not a cause of action."
15 (*Slauson Partnership v. Ochoa* (2003) 112 Cal.App.4th 1005, 1019). Therefore, Cross-
16 Complainant should have plead injunctive relief as a requested remedy within one of the nine
17 other alleged causes of action, not as a separate count in and of itself. However, none of the
18 previous causes of action have been incorporated by reference into the Tenth Cause of Action,
19 but rather only the "General Allegations". Likewise, the count does not allege the likelihood of
20 prevailing, and also fails to allege the harm that likely would occur absent an injunction. (*San*
21 *Diego Unified Port Dist. v. Gallagher* (1998) 62 Cal.App.4th 501, 503-504). The count also
22 depends on contingencies that have not occurred and therefore not ripe for decision.
23

24 **14. The entire Cross-Complaint is demurrable because of a defect or misjoinder of**
25 **parties.**

26 The Cross-Complaint alleges, inter alia, that it holds water rights associated to the

1 Blum Parcels, among others, that are superior to the rights of Blum Trustee. Blum Trustee's
2 name, property legal description and APN appear at page 5 of Exhibit "A", to the Bolthouse
3 Farms SAC, by which the Cross-Complainant identifies the Cross-Defendants. Despite having
4 expressly identified Blum Trustee, and having actual knowledge of Blum Trustee's adverse claim
5 to overlying and/or non-overlying water rights, Cross-Complainant claims to be "ignorant of the
6 true names of defendants having such adverse claims. (Cross-Complaint, at p. 3, ¶ 4). A
7 plaintiff's claimed ignorance of a defendant's name "must, of course, be real, and not feigned . . .
8 "
9 " (*Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 353). If a complaint identifies a
10 defendant by a fictitious name, then "When his true name is discovered, the pleading . . . must
11 be amended accordingly. . . " (Code of Civil Proc. § 474 (emphasis added)). Here, there has
12 been no such amendment, nor has Blum Trustee ever been served with the pleading, either in
13 his true name, or as a fictitiously named defendant.

14 Under Code of Civil Procedure § 389, joinder of an indispensable party such as Blum
15 Trustee is compulsory. Specifically, with respect to Quiet Title actions, Code of Civil Procedure
16 §§ 762.010, and 762.060(b), state that the Plaintiff shall name as defendants all persons having
17 adverse claims to the title of Plaintiff against which a determination is sought; that are of record
18 or known to the Plaintiff; or otherwise reasonably apparent. Evidence Code § 11, declares that
19 in a statute, the word "shall is mandatory . . ." (*Williams v. Superior Court* (2003) 111 Cal.App.4th
20 Supp. 1, 6). Here, Blum Trustee's interest in his parcel is a matter of public record, which has
21 been well known to Bolthouse Farms for well over 8 years. By virtue of the Lease Agreement
22 with Blum Trustee, Cross-Complainant has always had actual knowledge of Blum Trustee's
23 identity, whereabouts, and adverse claims. The absence of Blum Trustee as a named
24 defendant constitutes a misjoinder of parties. (Code of Civil Proc. § 430.10(d)).
25

26 **15. There is another action pending between the same parties [or privies] on the**
27 **same cause of action.**
28

1 Code of Civil Procedure § 430.10(c), provides that a party may demur to a pleading
2 on the ground that "there is another action pending between the same parties on the same
3 cause of action." Both Bolthouse Farms and Bolthouse Properties should be treated as one
4 party. *Black's Law Dictionary* (7th ed. 1999), defines "privity" as "the connection or relationship
5 between two parties, each having a legally recognized interest in the same subject matter (such
6 as a . . . piece of property) . . ." "The concept [of privity] has been expanded to refer to such an
7 identification in interest or one person with another as to represent the same legal rights."
8 (*Mayer v. L & B Real Estate* (2006) 136 Cal.App.4th 947, 960).
9

10 Since the two Bolthouse entities are in privity and an Assignment or Transfer occurred,
11 they are a single party for purposes of Code of Civil Procedure § 430.10(c). The Bolthouse
12 Farms action is "another action pending", which is proceeding simultaneously without abatement
13 between Cross-Complainant and Blum Trustee. Accordingly, the Court should sustain Blum
14 Trustee's demurrer on this ground. (See Discussion *supra* Part 6 (A)(1), at Pg. 6).
15

16 **16. Each alleged cause of action in the Cross-Complaint is uncertain.**

17 First: The parcels and water rights of both Bolthouse entities are identical and therefore
18 mutually exclusive. The ownership allegations of the Cross-Complaint, being inconsistent and
19 contradictory with those in the Bolthouse Farms' SAC, make the Cross-Complaint fatally
20 uncertain within the meaning of Code of Civil Procedure § 430.10(f). Second: The Cross-
21 Complaint is also uncertain in that Blum Trustee's identity and adverse interests appear on the
22 face of Exhibit "A", which is referenced into the pleading. Yet, Bolthouse Properties alleges in
23 that it is ignorant of that same information. Third: The Cross-Complaint is fatally uncertain in
24 that it fails to allege when or how Cross-Complainant supposedly acquired ownership of the
25 parcels and/or water rights, as well as fails to allege the nature of those rights (i.e. legal or
26 equitable). A complaint that fails to state the date of a material event is uncertain.
27

(*Gonzales v. State of California* (1977) 68 Cal. App.3d. 621), 634). Mere recitals or references to material facts that are left to surmise are subject to demurrer for uncertainty. (*Berstein v. Piller* (1950) 98 Cal.App.2d 441, 443-444). Fourth: The pleading defects in the Fifth through Tenth causes of action (see *supra* Parts 10-13), together with Bolthouse Properties failure to allege its legal capacity (i.e. Limited Liability Company v. Corporation), makes it uncertain.

17. Blum Trustee is entitled to reasonable attorney fees by contract.

If the Court should sustain the present demurrer without leave to amend, Blum Trustee would be the 'prevailing party' under Civil Code 1717(a). Under Code of Civil Procedure § 1032(b), a prevailing party is entitled as a matter of right to recover costs. Code of Civil Procedure § 1033.5(a)(10)(A), states that the items allowable as costs under § 1032 includes attorney fees when authorized by contract. Here, the Exhibit "B", Lease Agreement between Blum Trustee (Lessor) and Bolthouse Farms (Lessee), provides for the recovery of Lessor's attorney fees under various occurrences expressed in part at Page 10, Paragraph 15(c). Civil Code §§ 1995.320, & 1995.330, establishes that a landlord has the same remedies provided under the contract against the assignee, as against the tenant, who is jointly and severally liable.

18. Conclusion.


The face of the Cross-Complaint reflects four (4) separate grounds for the demurrer:

(1) There is another action pending between the same parties on the same cause of action;

(2) A defect or misjoinder of parties; (3) Failure to state facts sufficient to constitute a cause of action; and (4) Uncertainty. Therefore, Blum Trustee asks the Court to sustain the demurrer, without leave to amend. Cross-Complainant may be able to fix the uncertainties in the Cross-Complaint, but no amendment can change Cross-Complainant inability to allege facts sufficient to support any of it's ten causes of action against Blum Trustee. Finally, Blum Trustee requests that the Court award him reasonable attorney fees as part of his costs of suit.

1 Dated: December 11, 2007

2 Law Offices of Sheldon R. Blum

3
4 By: 
5 SHELDON R. BLUM, ESQ.
6 Attorney For Defendant Sheldon R. Blum,
Trustee For The Sheldon R. Blum Trust

7
8 **DECLARATION OF SHELDON R. BLUM, TRUSTEE**

9 I, Sheldon R. Blum, declare, as follows:

10 1. I am an attorney at law duly licensed to practice before this Court and all courts
11 of the State of California, with my Law Office located at 2242 Camden Avenue, Suite 201, San
12 Jose, CA 95124. I make this Declaration of Cross-Defendant Sheldon R. Blum, Trustee for
13 the Sheldon R. Blum Trust, an 'Unserved Defendant Claiming an Adverse Interest', in Support
14 of the Demurrer to Cross-Complainant's Bolthouse Properties unverified Cross-Complaint.

15 2. I have personal knowledge of the facts set forth herein, and if called to testify,
16 could and would competently testify thereto, except as to those facts stated herein on
17 information and belief, and as to those matters I believe them to be true and correct.

18 3. Since 1985, Sheldon R. Blum Trustee for the Sheldon R. Blum Trust has been the
19 fee owner of 120 acres, more or less, located in the Antelope Valley area, at Avenue J and 70th
20 Street East, in the City of Lancaster, State of California, bearing APN 3384-009-001 & 3384-009-
21 006, hereinafter "Blum Parcels". The Blum Parcels overlies percolating groundwater of unknown
22 extent and quantity.

23 4. I have personally known Wm. Bolthouse Farms, Inc., for over eight (8) years under a
24 Lessor/Lessee business relationship. Bolthouse Farms has been occupying the Blum Parcels to
25 cultivate and harvest it's crops under a written Lease Agreement dated August 2, 2001. A true
26

1 and correct copy of the subject Lease Agreement is attached hereto, and marked as Exhibit "B",
2 herein.

3 5. In default and breach of the Lease Agreement, and without my knowledge or waiver,
4 Bolthouse Farms has either assigned or transferred the above-stated Lease Agreement to Cross-
5 Complainant Bolthouse Properties, LLC., based on the allegations made in the Cross-Complaint.
6 Therefore, Bolthouse Properties has and still continues to irrigate it's crops on the Blum Parcels in
7 violation of the lease agreement. In addition, both Bolthouse Farms and Bolthouse Properties are
8 in default and breach of the Lease Agreement by reason of importing water onto the Blum Parcels
9 from it's adjacently owned properties through a underground pipeline system which runs
10 underneath 70th Street East and Avenue J. I am informed and believe and on such information and
11 belief state that to date, the total quantity of imported water onto the Blum Parcels is greater than 6
12 million gallons of groundwater.
13

14 6. Neither Bolthouse Farms nor Bolthouse Properties have any superior, coequal
15 and/or appurtenant water rights to pump any overlying groundwater on the Blum Parcels. In
16 addition, these entities do not have any rights, title or interests to extract the Blum Parcels
17 groundwater for non-overlying uses. Bolthouse Farms was accorded the exclusive right under the
18 lease agreement to repair and pump overlying groundwater for the beneficial use of the Blum
19 Parcels via the operational use of the Blum Parcels repaired water wells. The Blum Parcels were to
20 acquire and be allocated and credited overlying groundwater rights under the California priority
21 water allocation system through Bolthouse Farms' farming operations on the Blum Parcels.
22

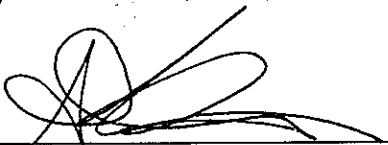
23 7. I have never been notified and/or served with either Bolthouse Farms verified
24 Complaint and/or Second Amended Complaint to Quiet Title, nor Bolthouse Properties Cross-
25 Complaint, notwithstanding their awareness that I have adverse and competing claims to the
26 overlying water beneficially used on the Blum Parcels.
27

1 8. I did not discover the existence of the subject Cross-Complaint and/or SAC until
2 September 14, 2007, and then only by a chance conversation with an attorney representing one of
3 the parties in this consolidated action. Upon my receipt and review of Plaintiff's pleadings, I was
4 extremely surprised to have read in the SAC attached Exhibit "A", at Page 5, that I am identified by
5 true name, capacity, property legal description, and LA County Assessor Parcel Number, as one of
6 the collective "Properties" both Bolthouse Farms and Bolthouse Properties seeks a Quiet Title
7 determination.

8 9. At all times herein mentioned, both Bolthouse Farms and Bolthouse Properties
9 conspired to intentionally and actively conceal this litigation from myself individually, and/or in
10 the capacity of Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust. Likewise both
11 parties as privies, assignor/assignee, and/or transferor/transferee, engaged in 'extrinsic fraud'
12 to my prejudice, so as to take unfair advantage over my property rights, despite recognizing
13 that I am an indispensable party to their pending actions requiring my compulsory joinder.
14

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct, including those matters stated on information and belief, in which I
17 believe them to be true.

18 Executed this 11th day of December, 2007, in San Jose, California.

19
20 
21 _____
22 Defendant Sheldon R. Blum, Trustee
23 For The Sheldon R. Blum Trust
24
25
26
27
28